

REMARKS

Reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Claim 1 has been amended by incorporating the recitations from now cancelled claim 2.

In the same manner, independent claim 13 has been amended by incorporating the recitations of now cancelled claim 2.

Claim 6 has been amended to depend from claim 1.

By this amendment, claims 2, 17, 19, 20, 21, 27, 28 and 29 have been cancelled. Cancellation of these claims is without prejudice or disclaimer.

The claims presently pending before the Examiner are 1, 6, 12, 13 and 16.

Applicants have attended to the underlining of the word "fructose" in claims 1 and 13 which overcomes the objections.

The phrase "Bacillus, ..., yeast genera Saccharomyces and Candida and fungal Aspergillus and Rhizopus" (claim 1, lines 9-11; and claim 13, lines 10-11) were inadvertently included and struck-through in the June 1, 2010 Response. They should not have been included and amended. Since the objections to the claims have been overcome, withdrawal of the rejections is respectfully solicited.

Since claim 29 has been cancelled, without prejudice or disclaimer, if claim 16 is found allowable, its ultimate allowance should not present a problem under 37 CFR 1.75 or MPEP § 706.03(k).

The rejection of claim 6 under § 112, second paragraph, has been overcome by appropriate amendment of claim 6 to make it depend from claim 1. Withdrawal of the rejection is respectfully solicited.

Claims 1, 6, 13, 16, 27 and 29 stand rejected under 35 USC 102(b) as being anticipated by Buhler et al. (US 5,192,656) as evidenced by Lindsay et al. (US Published Application 2005/0214411). This rejection is respectfully traversed.

Applicants submit that Buhler does not disclose "reusing the active blanching medium". This recitation was present in claim 1, prior to the amendments made herein. Further, the recitations in claim 2, now cancelled, have been incorporated in claim 1 to further distinguish over the teaching of Buhler. The Examiner has already acknowledged novelty in paragraph 26 of the Official Action.

With the instant amendment, the claimed process recites the use of certain microorganisms to withdraw glucose and fructose from the blanching medium, which is then returned again to the actual blanching process.

Since the claims clearly distinguish over the teaching of Buhler by a preponderance of the evidence, a *prima facie* case of anticipation has not been established. Withdrawal of the rejection is respectfully solicited.

The rejection of claim 17 under § 102(e) as anticipated by Howie et al is moot in view of the cancellation of the claim.

The rejection of claim 17 under § 102(e) as anticipated by Zyzak et al. is moot in view of the cancellation of claim 17.

Claim 12 is rejected under § 103(a) over Buhler. This rejection is traversed.

It is submitted that independent claim 1 distinguishes over the teachings of Buhler in the sense of § 103(a). For the same reasons it distinguishes over Buhler in the sense of § 102(e) set forth previously. Therefore, claim 12 which depends from claim 1 also distinguishes thereover for the self-same reasons.

Claim 2 has been rejected under § 103(a) over the combination of Buhler in view of Montgomery. This rejection is traversed.

In paragraphs 26 – 27 of the Office Action, the Examiner argues that the combination of Buhler and Montgomery would anticipate the claimed subject-matter of claim 2, now cancelled.

Applicants respectfully disagree since they strongly believe that the claimed process distinguishes over Buhler, which teaches the production of a long-lived food product involving heat treatment (such as blanching), *after* which the vegetable or food is cooled and

fermented, In fact, in Buhler after the fermentation water is drained from the food, the fermented food is washed to ***remove water of fermentation.*** (See Col. 1, lines 57-68.)

Montgomery discloses the reuse of water in industry, but it addresses at the top of page 3-2 (lines 4- 8) that there are several concerns over sanitary requirements and incorporation of process water in the product that make reuse difficult to implement in the food industry. At page 4-20, Montgomery merely *suggests* the use of recycled water in blanching. Again, at the top of page 4-21 it is added that care should be taken in implementing such recycling steps. It is noted that Montgomery itself is skeptical on the implementation of reuse of water in the food industry, and one should be careful when drawing conclusions as if it "*would have been obvious to a skilled person ...*"

Moreover, the Examiner refers to Figure 3-3 of Montgomery as allegedly showing a desugaring unit. However, the "in-line treatment' disclosed in Figure 3-3 refers to some countercurrent recycle realizing that "*the product comes into contact with subsequently higher quality water until the final step where highest quality water is used'* (page 3-2). *It is silent on any treatment for reducing sugar concentrations.*

Since Montgomery does not teach or disclose any treatment for reducing sugar concentration, the Examiner must resort to the teachings of Buhler. However, Applicants again stress that Buhler teaches the implementation of bacterial strains that effectively reduce glucose and fructose levels *after blanching, and it teaches draining steps afterwards.* Again, reference is made to col. 11, lines 57 - 68 of Buhler.

In fact, the *combination* of Buhler and Montgomery *teaches away* from the claimed invention, in which water soluble food components are saved during water treatment. If Applicants were to follow the Examiner's reasoning, the skilled person would subject the food of Buhler to a blanching step and a subsequent cooling, and may recycle part of the cooled blanching medium back to the blanching step, as allegedly taught by Montgomery. After cooling, he would then perform a fermentation step and afterwards drain the water of fermentation.

However, when choosing such a sequence, the skilled person would effectively reduce the concentrations of glucose and fructose, *but still at the cost of losing valuable water-soluble components in the fermentation washing steps* (iii and iv in Buhler). Neither

Montgomery nor Buhler teaches the use of bacterial strains during blanching, *and/or* to return 'desugared' blanching medium (i.e. containing water-soluble food components diffused from the food product during blanching). In fact, it is noted that Buhler even adds sucrose, glucose and fructose to the water before fermentation (see Col. 3, lines 10 - 12). Glucose is added to the fermentation water after potato blanching in the table at Col. 7 of Buhler. Hence, there is no incentive for the skilled person in Buhler (nor in Montgomery for that matter) to remove reducing sugars from the food product.

In the unlikely event the Examiner would consider Montgomery as teaching one of ordinary skill in the art to recycle the drainage water of steps iii and iv in Buhler, she is reminded that Buhler discloses that the washing step after fermentation is to eliminate the water of fermentation which may have a particular flavor (Col. 4 lines 40 - 41). Hence, Buhler strongly discourages such a recycling step, introducing these flavors into the product again. In other words, the Examiner's proposed modifications to Buhler render it unsatisfactory for its intended purpose.

Independent claims 1 and 13 and dependent claim 12, which now include the recitations of cancelled claim 2, clearly distinguish over the combination of Buhler and Montgomery. Withdrawal of the rejection is solicited.

Claim 12 has been rejected under § 103(a) over the combination of Buhler and Zyzak. This rejection is traversed.

Claims 13, 16-17 and 29 have been rejected under § 103(a) over Zyzak in view of Buhler. This rejection is traversed.

The teachings of Zyzak does not change the foregoing argument. The Examiner has failed to realize that Buhler teaches the use of certain micro-organisms for *preservation after blanching*, and implementing *additional water drainage steps to remove any flavors induced by fermentation*.

Assuming arguendo that the skilled person would even consider using these micro-organisms in another step of the process of Buhler, based for instance on the enzyme treatment of Zyzak, he would still need to implement additional drainage steps deemed necessary in Buhler. This would be at the cost of valuable water-soluble food components

which would then be lost. Moreover, the combination does not teach the use of a desugaring unit.

Claim 12 clearly distinguishes over the combination of Buhler and Zyzak.
Withdrawal of the rejection is solicited.

Since claims 19-21 and 28 have been cancelled, their rejection over Tricoit in view of Zyzak is moot.

Since independent claims 1 and 13, as well as the dependent claims clearly distinguish over each of the various Section 103(a) rejections by a preponderance of the evidence, the Examiner has failed to establish a *prima facie* case of obviousness.
Accordingly, the rejections have been overcome and should be withdrawn.

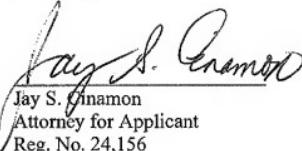
The issuance of a Notice of Allowance is in order and is respectfully solicited.

Please charge any fees which may be due to our Deposit Account No. 01-0035.

Respectfully submitted,

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